

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 NFL PROPERTIES LLC et al,

No. C 16-474 CRB

12 Plaintiffs,

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

13 v.

14 FELANNIA HUMPHRIES et al,

15 Defendants.

17 Plaintiffs NFL Properties, LLC (“NFLP”), Panthers Football, LLC d/b/a Carolina
18 Panthers (the “Carolina Panthers”), and PDB Sports, Ltd. d/b/a Denver Broncos Football
19 Club (the “Denver Broncos”) (collectively “Plaintiffs”), filed this federal and state trademark
20 infringement action to address allegedly counterfeit tickets and merchandise sold in the
21 weeks before and after the 2016 Super Bowl. See generally Motion (dkt. 4). The Court
22 entered a Temporary Restraining Order and Seizure Order. See Orders (dkts. 12 and 13).
23 The Court also entered a preliminary injunction and confirmed the seizure of goods
24 recovered from four named Defendants: Nigel Nelson, Ramon Gernandez, Chrisphe Duckett,
25 and Felannia Humphries. See Order (dkt. 26).

26 Now, Plaintiffs move for default judgment. See Motion (dkt. 34). Plaintiffs have
27 served Defendants, see Proof of Service (dkt. 30-3), and the Clerk of Court has entered
28 default, see Entry of Default (dkt. 31). Plaintiffs do not request damages or permanent
injunctive relief against Defendants—they only request permission to dispose of the

1 counterfeit items they have seized and also request exoneration of their bond. See Motion
2 (dkt. 34) at 3. The Court has reviewed Plaintiffs' motion and has given Defendants an
3 opportunity to respond in writing and to appear at a hearing on May 6, 2016. See Minute
4 Entry (dkt. 34). Defendants have not responded or appeared. See Minute Entry (dkt. 38).
5 For the reasons outlined below, the Court GRANTS Plaintiffs' motion for default judgment.

6 **I. FACTUAL AND PROCEDURAL BACKGROUND¹**

7 Plaintiffs received a temporary restraining order and ex parte seizure order to combat
8 counterfeiting at the 2016 Super Bowl. See Orders (dkts. 12 and 13). This Court entered a
9 preliminary injunction and confirmed the seizure of goods recovered from the four named
10 Defendants. See Order (dkt. 26). Plaintiffs now move for default judgment. See Motion.

11 **A. The Super Bowl and Plaintiffs' Trademarks**

12 Plaintiffs own the NFL trademarks, names, logos, symbols, slogans, and identifying
13 marks used in connection with the 2016 Super Bowl (the "NFL trademarks"). See Mot. at 4.
14 Plaintiffs have identified dozens of these NFL trademarks and provided documentation on
15 their registration with the Trademark Office. See Danias Decl. Exs. 1 and 2 (dkts. 5-6-5-9).
16 Plaintiffs license numerous companies to produce and sell merchandise bearing these NFL
17 trademarks. See Danias Decl. ¶ 14-18. According to Plaintiffs, this merchandise is
18 produced under strict guidelines to promote the NFL's image and to provide the public with a
19 quality product. See Danias Decl. ¶ 15-16.

20 **B. Counterfeiting at the Super Bowl**

21 Plaintiffs assert that every Super Bowl attracts a high number of professional
22 counterfeiters who sell (a) counterfeit merchandise and (b) unredeemable counterfeit tickets
23 that infringe on the NFL trademarks. See Grooms Decl. ¶ 8; Holdridge Decl. ¶ 7. These
24 professional counterfeiters take steps to conceal their identities through the use of middlemen
25 and by transferring or destroying merchandise upon detection. See Danias Decl. ¶ 33.
26 Grooms Decl. ¶ 13. Plaintiffs thus contended that the only effective way to combat these

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28 ¹ Upon an entry of default by the Clerk, the factual allegations of the plaintiff's complaint will
be taken as true, except those relating to the amount of damages. See Derek Andrew, Inc. v. Poof
Apparel Corp., 528 F.3d 696, 702 (9th Cir. 2008).

1 professional counterfeiters is to seize their goods and tickets at the point of sale. See Danias
2 Decl.¶¶ 31–35; Grooms Decl. ¶¶ 11–13; Holdridge Decl. ¶¶ 9–11.

3 According to Plaintiffs, courts have granted them seizure orders to combat
4 counterfeiting in connection with the past thirty-three Super Bowl games. See Danias Decl.
5 ¶¶ 30–31, 35. To that end, Plaintiffs requested and this Court granted a Temporary
6 Restraining Order, Seizure Order, and Order to Show Cause for a Preliminary Injunction to
7 combat allegedly counterfeit tickets and merchandise sold around the 2016 Super Bowl. See
8 generally Motion (dkt. 4); Orders (dkts. 12 and 13). The Court also entered a preliminary
9 injunction and confirmed the seizure of goods recovered from four named Defendants: Nigel
10 Nelson, Ramon Gernandez, Chrisphe Duckett, and Felannia Humphries. See Order (dkt. 26).

C. Seizures at the Super Bowl

12 Plaintiffs have submitted a declaration from Heather Holdridge, a private investigator,
13 stating that law enforcement collected 82 counterfeit items of merchandise at the 2016 Super
14 Bowl. See Holdridge Decl. at 3. According to that declaration, Defendant Humphries was
15 found with eight counterfeit ticket holders, Defendant Duckett was found with 26 counterfeit
16 ticket holders, Defendant Hernandez was found with 12 counterfeit t-shirts, and Defendant
17 Nelson was found with 35 counterfeit scarves and a counterfeit NFL credential. See
18 Holdridge Decl., Ex. 2.

19 Now, the Plaintiffs move for default judgment. See Motion (dkt. 34). Plaintiffs have
20 served Defendants, see Proof of Service (dkt. 30-3), and the Clerk of Court has entered
21 default, see Entry of Default (dkt. 31). Plaintiffs do not request damages or permanent
22 injunctive relief against Defendants—they only request permission to dispose of the
23 counterfeit items they have seized and also request exoneration of their bond. See Motion
24 (dkt. 34) at 3. The Court has reviewed Plaintiffs' motion and has given Defendants an
25 opportunity to respond in writing and to appear at a hearing on May 6, 2016. See Minute
26 Entry (dkt. 34). Defendants have not responded or appeared. For the reasons outlined
27 below, the Court GRANTS Plaintiffs' motion for default judgment.

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II. LEGAL STANDARD

The Court may enter a default judgment upon motion by a plaintiff after entry of default by the Clerk. See Fed. R. Civ. P. 55(b). Whether to grant a motion for the entry of a default judgment is within the discretion of the trial court. See *Lau Ah Yew v. Dulles*, 236 F.2d 415, 416 (9th Cir. 1956). Upon an entry of default by the Clerk, the factual allegations of the plaintiff's complaint will be taken as true, except those relating to the amount of damages. See *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008).

In determining whether to enter a default judgment, a court has "an affirmative duty to look into its jurisdiction over both the subject matter and the parties." In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999). The Court has subject matter jurisdiction here given that Plaintiffs bring federal trademark infringement claims against Defendants under 15 U.S.C. § 1114. See Complaint; 15 U.S.C. § 1121. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1337(a). Furthermore, the Court has personal jurisdiction over Defendants because Defendants committed the alleged trademark infringement and unfair competition in this district. Id. ¶ 8. The Court thus concludes that it has "jurisdiction over both the subject matter and the parties." See *Tuli*, 172 F.3d at 712; see also *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

III. DISCUSSION

This Court examines the following factors in determining whether to enter a default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the likelihood of obtaining a decision on the merits. See *Etel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Here, these factors weigh in favor of granting Plaintiffs' motion for default judgment.

Under the first factor, absent a default judgment, Plaintiffs will not be compensated for losses suffered from trademark infringement and will not be able to protect their marks. See, e.g., *Wilamette Green Innovation Ctr., LLC v. Quartis Capital Partners*, No.

1 14-cv-00848, 2014 WL 5281039, at *6 (N.D. Cal. 2014) (citations omitted) (“Denying a
 2 plaintiff a means of recourse is by itself sufficient to meet the burden posed by this factor.”).

3 The second and third Eitel factors—concerning the merits of Plaintiffs’ substantive
 4 claims and the sufficiency of their Complaint—also weigh in favor of granting default
 5 judgment here. See Compl. at 16–26; Eitel, 782 F.2d at 1471–72. Plaintiffs have alleged
 6 both state and federal trademark and unfair competition causes of action in their Complaint.
 7 See generally Compl. (dkt. 22). The Court concludes that (a) Plaintiffs have adequately
 8 pleaded a trademark infringement claim,² and (b) analysis of the remaining claims is
 9 unnecessary because the remedies sought here are available based on the trademark claim
 10 alone, see Rolex Watch, U.S.A., Inc. v. Michel Co., 179 F.3d 704, 708 n.6 (9th Cir. 1999);
 11 U-Haul Int’l, Inc. v. Jartran, Inc., 793 F.2d 1034, 1041–42 (9th Cir. 1986).

12 Turning to the fourth Eitel factor, if the sum of money at stake in the litigation is
 13 substantial or unreasonable, default judgment is discouraged. See Eitel, 782 F.2d at 1472
 14 (three-million dollar judgment weighed against default judgment). Here, Plaintiffs do not
 15 request damages or permanent injunctive relief against Defendants—they only request
 16 permission to dispose of the counterfeit items they have seized and also request exoneration
 17 of their bond. See Motion (dkt. 34) at 3.

18 Turning to the remaining factors, there is no possibility of dispute over material facts
 19 here because, upon an entry of default by the Clerk, the factual allegations of the plaintiff’s
 20 complaint related to liability are taken as true. See Derek Andrew, Inc. v. Poof Apparel
 21 Corp., 528 F.3d 696, 702 (9th Cir. 2008). Furthermore, there is no evidence of excusable
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23 ² To prevail on a trademark infringement claim under Section 32 of the Lanham Act, a plaintiff
 24 must show: (1) “that it owns a valid mark, and thus a protectable interest,” and (2) “that the alleged
 25 infringer’s use of the mark is likely to cause confusion.” KP Permanent Make-Up, Inc. v. Lasting
Impression, Inc., 408 F.3d 596, 602 (9th Cir. 2005) (quoting 15 U.S.C. § 1114(1)(a)). Plaintiffs have
 26 adequately alleged that they own valid trademarks covering the items at issue here. See Compl. ¶¶
 27 22–25. The Court concludes that Plaintiffs have also properly alleged likelihood of confusion under the
 28 test established in AMF Inc. v. Sleekcraft Boats. See 599 F.2d 341, 348–49 (9th Cir. 1979); Compl. ¶¶
 57, 80, 105. The items at issue here are allegedly counterfeits that are closely similar to the marks
 Plaintiffs are attempting to protect. See Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., 658
 F.3d. 936, 945 (9th Cir. 2011) (“[T]here is a likelihood of confusion . . . when the offending mark is a
 counterfeit mark, or a mark virtually identical to the previously registered mark coupled with the intent
 to pass off or borrow from established good will.”).

1 neglect by Defendants, given that they were properly served. See Proof of Service (dkt. 30-
2 3). Finally, although default judgments are generally disfavored compared to decisions on
3 the merits, see Pena v. Seguros La Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985),
4 Defendants' failure to appear has made a decision on the merits impossible. See Eitel, 782
5 F.2d at 1471-72. The Court thus concludes that the Eitel factors weigh in favor of default
6 judgment, and GRANTS Plaintiffs' Motion for Entry of Default Judgment.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for Default
9 Judgment. The Court ORDERS that judgment shall be entered in favor of Plaintiffs against
10 Felannia Humphries, Christophe Duckett, Ramon Hernandez, Jr., and Nigel Piers Nelson.

11 The Court further ORDERS that Plaintiffs may dispose of the counterfeit items seized
12 pursuant to the February 2, 2016 Order by donating such items abroad through third-party
13 organizations or otherwise, or if reasonably necessary, by destroying such items. Finally, the
14 Court ORDERS that Plaintiffs' bond in the amount of \$75,000 (Receipt No. 3461112591) is
15 hereby exonerated, and the Clerk of the Court shall release the bond to Plaintiffs' counsel.

16 **IT IS SO ORDERED.**

17 Dated: May 6, 2016



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE